IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RSA No. 235 of 1996

Reserved on : 29th October, 2007
Date of Decision: 30th October, 2007

Khalelo Ram	Appellant
Versus	
Raj Kumar and others	Respondents

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? Yes.

For the appellant: Mr.R.K.Sharma, Advocate.

For the respondent: Mr.J.R.Thakur, Advocate.

Sanjay Karol, J.

The present appeal has been filed against the judgment and decree dated 10.5.1996 passed by the District Judge, Hamirpur in Civil Appeal No. 33 of 1990 titled as Khalelo Ram vs. Raj Kumar and others, dismissing the appeal filed by the present appellant assailing the judgment and decree dated 28.11.1989 passed in Suit No. 69 of 1986 titled as Raj Kumar and others vs. Khalelo Ram. The present appeal is, therefore, against the concurrent findings of fact recorded by the Court below.

For the purpose of convenience, the appellant herein is referred to as "the defendant" and the respondents herein are referred to as "the plaintiffs".

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[1] Whether the reporters of Local Papers are allowed to see the Judgment?

On 2.1.1987, the appeal was admitted on the following substantial questions of law:-

> "1. Whether the tenant of a mortgagee of an agricultural land is not entitled to continue his possession even after the redemption?
> 2. Whether the mortages executed prior to the coming into force of the new limitation Act, would be governed by the provisions of the old Limitation Act?
> 3. Whether the suit for permanent prohibitory injunction will be maintainable when the plaintiffs are not in possession of the suit land?
> 4. Whether the learned Courts below are justified in ignoring the evidence, which goes to the root of the case?"

However, at the time of hearing, learned counsel for the appellant fairly stated that the only substantial question of law which arises for consideration is "as to whether Smt. Kiran Aggarwal, as a District Judge could have heard the appeal in view of the fact that she had rendered a decision as a Senior Sub Judge in a prior suit filed inter se between the parties?".

Brief facts giving rise to the filing of the present appeal are as under:-

The defendant herein filed a suit for redemption against the predecessor-in-interest of plaintiffs in the Court of Senior Sub Judge, Hamirpur, which was registered as Suit No. 192 of 1974 titled as Khalelo Ram vs. Jai Gopal (deceased through his representatives). In the said suit the following issues were framed by the Court for adjudication:-

"1. Whether the suit is properly valued for the Court fee and jurisdiction? OPP

2. Whether the property has not been properly described and wrong number of mutation has been given? OPD

3. Whether the suit is within limitation? OPP

4. Whether the plaintiff has no locus standi to file the suit? OPD

5. Whether the mortgage has been redeemed? OPD

6. Whether the plaintiff and his brother Hari Chand and Jai Gopal jointly purchased the right of mortgage on the suit land from Jai Kishan and Johndu in 1955? OPP

7. Whether the land is free from encumbrances? OPP

8. Relief."

The said suit was dismissed by Smt. Kiran Aggarwal, the then Senior Sub Judge, in terms of judgment and decree dated 17.3.1983. The aggrieved defendant assailed the same before the District Judge, Hamirpur, H.P. by way of Appeal No. 46 of 1983 and the same was also dismissed on 23.9.1985 by Shri S.S.Ahuja, the then Presiding District Judge.

The defendant, however, refused to acknowledge the plaintiffs claim with the result that the plaintiffs had to file a suit against the defendant in the Court of Senior Sub Judge, Hamirpur, which was registered as Civil Suit No.69 of 1986, titled as Raj Kumar and others vs. Khalelo Ram.

The plaintiffs suit was for declaration that they are owners to the extent of 1/8th share measuring 17 Kanals and 13 Marlas out of suit land as entered in Khata No.1, Khatauni No.1, Kitas 87, measuring 141 Kanals 4 Marlas, as per Jamabandi (revenue record) pertaining to the year

1980-81, situate in Tika Pandtohri, Mauja Majhog Samluhi, Tehsil and District Hamirpur, H.P. The suit was filed on the premises that defendant's predecessor-in-interest had mortgaged the suit land to the predecessors-in-interest of the plaintiffs. With the afflux of time, the right of the mortgagee to redeem the property extinguished and, therefore, the plaintiffs' predecessors-in-interest became owners thereof. They also became owners by virtue of execution of certain shares in the land through sale by some of the share holders.

The suit was resisted by the defendant, inter alia, on the ground that he is a tenant and by virtue of the provisions of H.P. Tenancy and Land Reforms Act, 1972 (for short, the Act), he had become owner whereof and the plaintiffs were not entitled to any right therein.

The trial Court framed the following issues:-

"1. Whether the plaintiffs have become owners of the suit land by afflux of time? OPP

2. Whether the defendant is a tenant on the suit land, if so, its effect? OPD

3. Whether the suit is not within time? OPD

4. Whether the suit is not maintainable in the present form as alleged? OPD

5. Whether the plaintiffs have no cause of action? OPD

6. Whether the plaintiffs are not entitled to the share of Hari Chand and Hari Ram as alleged? OPD.

6-A What is the effect of Civil Suit No. 192 of 1974 and Appeal No. 46 of 1983 between the parties on the present suit? OPP

7. Relief."

Issue No.1 was decided in favour of the plaintiffs and issue No.2 and 6 were decided against the defendant and also in favour of the plaintiffs. Issue No.6-A was decided as under:-

> "For plaintiffs it was urged that the effect of suit No. 192 of 1974 and appeal No. 46 of 1983 is that the findings in that suit will act as res judicata as far as the question of redemption of the suit land to the extent of share of Jai Gopal or his heirs, the present plaintiffs, is concerned. I am in agreement with the contention of the learned counsel for the plaintiffs. Accordingly, this issue is decided.

The suit of the plaintiffs was decreed in favour of the plaintiffs in terms of judgment and decree dated 28.11.1989.

Aggrieved by the said judgment and decree, the defendant filed an appeal before the District Judge, Hamirpur, which was registered as Appeal No. 33 of 1990. The then District Judge Smt. Kiran Aggarwal dismissed the appeal upholding the decision of the trial Court in terms of judgment and decree dated 10.5.1996, which is now the subject of present appeal.

Learned counsel for the appellant has submitted that there is a human tendency to uphold ones own decision and, therefore, his client had reasonable apprehension of not having got a fair decision on merits from the very same Judge, who had earlier decided the matter between the parties. He has referred to a decision of the Supreme Court in *Manak Lal v. Dr. Prem Chand Singhvi and others,* reported in AIR 1957 SC 425, in support of his contention.

It is an admitted case of the parties that in both the suits the parties are same. It is also an admitted case of the parties that both the

suits pertain to the same land. However, perusal of judgment and decree dated 17.3.1983 passed by Smt. Kiran Aggarwal, the then Senior Sub Judge, Hamirpur (Ext.P-1) would show that the issue before the Court was as to whether the plaintiff had any right of redemption in the mortgaged property. The contention of the plaintiff therein (defendant herein) was negatived by the Court on merits. Even in an appeal, the plaintiff's contention was rejected and the Court held that plaintiff (defendant herein) had lost his right of redemption of the mortgaged property and had no right in law to redeem the same. In Suit No. 69 of 1986, the Court was required to consider as to whether the defendant herein as tenant had acquired a right of ownership by virtue of the provisions of the Act. Therefore, even though the property in both the suits is same, but, however, the controversy for adjudication before the Court was totally different.

In *Manak Lal (supra)* the Apex Court has held that whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice is a question which needs to be decided in each case.

I see no force in the submission that Smt. Kiran Aggarwal, the then District Judge could not had heard the appeal and passed the impugned judgment and decree for the reason that prior to the final hearing of the present appeal objection that Smt. Kiran Aggarwal could not have heard and decided the impugned appeal was never taken. It is for the first time and before this Court that the question is being raised. Objection, if any, is deemed to have been waived off. Further, as has been

noticed earlier the issue for adjudication and matter in controversy in both the suits is not identical.

The submission of the learned counsel for the appellant is too far fetched for the simple reason that the Judge may not even have remembered having rendered a decision inter se between the parties. The time gap between the two decisions rendered by Smt. Kiran Aggarwal, one as a Senior Sub Judge and another as a District Judge is more than 13 years. That apart, the District Judge was presiding over and discharging her duties as Senior Sub Judge and nothing prevented her from hearing the appeal. It is not that she was hearing the appeal arising out of her own judgment. The decision rendered by Smt. Kiran Aggarwal, as Senior Sub Judge was affirmed in an appeal decided by Shri S.S.Ahuja, the then District Judge. As has already been noticed the issue in controversy and consideration before the Court in both the suits was not similar and identical but was in fact different. The apprehension of the defendant-appellant is absolutely unfounded.

The substantial question of law is answered accordingly.

For the all the aforesaid reasons, I see no reason to interfere with the impugned judgment and decree. The appeal is accordingly dismissed.

30th October, 2007 (Sanjay Karol),
(C) Judge